UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IGNACIO SOLIS, on behalf of himself and all others similarly situated, Plaintiff, -against- COSTAMAR EXPRESS CARGO & SHIPPING, INC. and MARIA VICTORIA ARCOS, Defendants.	**COMPLAINT** **FLSA COLLECTIVE ACTION AND RULE 23 CLASS ACTION** **JURY TRIAL DEMANDED**

Plaintiff IGNACIO SOLIS, on behalf of himself and all others similarly situated, by and through his attorneys, Harrison, Harrison & Assoc., Ltd, alleges upon personal knowledge as to himself and upon information and belief as to other matters, as follows:

PRELIMINARY STATEMENT

1. Plaintiff IGNACIO SOLIS (referred to herein as "Plaintiff") was a long-term non-exempt employee employed by COSTAMAR EXPRESS CARGO & SHIPPING, INC. and MARIA VICTORIA ARCOS (collectively referred to herein as "Defendants"), subject to the wage and overtime provisions of the Fair Labor Standards Act of 1938 (hereinafter referred to as "FLSA"), as amended, 29 U.S.C. § 201 *et. seq.*, and the New York Labor Law (hereinafter referred to as "NYLL").

2. Plaintiff brings this action on behalf of himself and all others similarly situated seeking unpaid wages and unpaid overtime wages based upon Defendants' violations of the FLSA, the NYLL, and the supporting New York State Department of Labor regulations, as well as liquidated damages and statutory penalties for violations of NYLL 195(1) and (3).

JURISDICTION AND VENUE

3. Jurisdiction of this Court over this controversy is based upon 29 U.S.C. § 201 *et. seq.*, and 28 U.S.C § § 1331.

4. This Court has jurisdiction over all state law claims brought in this action pursuant to 28 U.S.C. § 1367.

5. Venue is proper within this District pursuant to 28 U.S.C. § 1391, because Defendant COSTAMAR EXPRESS CARGO & SHIPPING, INC. maintains its principal place of business in, does business in, and resides in, this District. Venue is further proper within this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred within this District.

6. Accordingly, this action properly lies in the Eastern District of New York, pursuant to 28 U.S.C. § 1391.

THE PARTIES

7. Plaintiff resides in the County of Queens in the State of New York.

8. At all times relevant hereto, Plaintiff was an "employee" within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e) and NYLL § 190(2).

9. Defendants employed Plaintiff as a driver from in or about March, 2006 until March, 2014, approximately.

10. Plaintiff's written consent to sue form is attached hereto as Exhibit "A".

11. Defendant COSTAMAR EXPRESS CARGO & SHIPPING, INC. is a New York Domestic Business Corporation with its principal place of business located at 4310 National Street, Corona, New York 11368.

12. Defendant MARIA VICTORIA ARCOS is the owner, chairman/chief executive officer, manager and/or operator of Defendant COSTAMAR EXPRESS

CARGO & SHIPPING, INC.

13. Defendant ARCOS has, and at all relevant times had, and exercised, the power to hire, fire, and control the wages and working conditions of the Plaintiff, the FLSA Collective Plaintiffs, and the Class Members.

14. At all times relevant hereto, each of the Defendants were “employers” within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d) and NYLL § 190(3).

15. At all times relevant hereto, the activities of the Defendants jointly and separately constituted an “enterprise” within the meaning of Section 3 (r) & (s) of the FLSA, 29 U.S.C. § 203 (r) & (s).

16. At all times relevant hereto, Defendants employed employees, including Plaintiff, the FLSA Collective Plaintiffs, and the Class Members, who regularly engaged in commerce, in the production of goods for commerce, or in handling, selling or otherwise working on goods and materials, which were moved in or produced for commerce within the meaning of Section 3(b), (g), (i), and (j) of the FLSA, 29 U.S.C. § 203(b), (g), (i), (j), (r), & (s) (A)(i).

17. At all times relevant hereto, Defendants’ annual gross volume of sales made or business done was not less than $500,000.00 within the meaning of 29 U.S.C. § 203(s)(A)(ii).

COLLECTIVE ACTION ALLEGATIONS

18. Plaintiff brings the First Claim for Relief as a collective action pursuant to the FLSA, 29 U.S.C. § 216(b), on behalf of all persons employed by Defendants as a non-exempt employee during the three years prior to the filing of the original Complaint

in this case as defined herein. All said persons, including Plaintiff, are referred to herein as the "FLSA Collective Plaintiffs".

19. At all relevant times, Plaintiff and the other FLSA Collective Plaintiffs are and have been similarly situated, have had substantially similar job requirements, job duties, and pay provisions, and are and have been subject to Defendants' decision, policy, plan, practice, procedure, routine and rules to willfully fail and refuse to pay them the legally required overtime premiums for all hours worked in excess of forty (40) hours per workweek. The claims of the Plaintiff herein is essentially the same as those of the other FLSA Collective Plaintiffs.

20. Other non-exempt employees currently or formerly employed by Defendants should have the opportunity to have their claims for violations of the FLSA heard. Certifying this action as a collective action under the FLSA will provide other employees to receive notice of the action and allow them to opt in to this action if they so choose.

21. The First Claim for Relief is properly brought under and maintained as an opt-in collective action pursuant to §216(b) of the FLSA, 29 U.S.C. 216(b). The FLSA Collective Plaintiffs are readily ascertainable. For purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided to the FLSA Collective Plaintiffs via first class mail to the last addresses known to Defendants.

RULE 23 CLASS ALLEGATIONS – NEW YORK

22. Plaintiff brings the Second, Third, and Fourth Claims for Relief pursuant to the Fed. R. Civ. P. ("FRCP") Rule 23, to recover unpaid wages, unpaid overtime pay,

illegal/unauthorized deductions, statutory penalties, liquidated damages, and other damages on behalf of all individuals employed in the State of New York by Defendants as non-exempt employees at any time during the six years prior to the filing of the original Complaint in this case as defined herein (the "Class Period"). All said persons, including Plaintiff, are referred to herein as the "Class Members" and/or the "Class".

23. The number, names and addresses of the Class Members are readily ascertainable from the records of the Defendants. The dates of employment and the rates of pay for each Class Member, the hours assigned and worked, and the wages paid to them, are also determinable from Defendants' records. Notice can be provided by means permissible under FRCP Rule 23.

24. The proposed Class is so numerous that joinder of all Class Members is impracticable, and the disposition of their claims as a Class will benefit the parties and the Court. While the precise number of such persons is unknown to the Plaintiff and is presently within the sole control of Defendants, Plaintiff believes that through discovery he will obtain evidence to establish that there are at least 40 members of the Class.

25. Plaintiff's claims are typical of those claims of the Class Members, and the relief sought is typical of the relief which would be sought by each Class Member in separate actions. All the Class Members were subject to the same corporate practices of Defendants, in that they were not compensated for overtime hours worked as required by 12 NYCRR § 142-2.2, and that Defendants took illegal/unauthorized deductions from their pay, and that Defendants failed to provide them with proper notices and wage statements as required by NYLL §195. Defendants' corporate-wide policies and

practices affected all Class Members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each Class Member.

26. As fellow employees of Defendants, which failed to adequately compensate Plaintiff and the members of the Class as required by law, Plaintiff and the other Class Members sustained similar losses, injuries and damages arising from the same unlawful policies, practices and procedures.

27. Plaintiff is able to fairly and adequately protect the interests of the Class and has no interests antagonistic to the Class. Plaintiff has retained David Harrison, Esq., a competent and experienced employment litigator.

28. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because the losses, injuries and damages suffered by each of the individual Class Members are relatively small in the sense pertinent to a class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual Class Members to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in a significant saving of these

costs. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the Class, establishing incompatible standards of conduct for Defendants and resulting in the impairment of Class Members' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

29. Upon information and belief, employees of Defendants in these types of actions are often afraid to individually assert their rights out of fear of direct or indirect retaliation and former employees are fearful of bringing individual claims because the fear that doing so could harm their employment, future employment, and future efforts to secure employment. A class action provides Class Members who are not named in the Complaint a degree of anonymity which allows for the vindication of their rights while eliminating or reducing these risks.

30. The questions of law and fact common to the Class predominate over any questions affecting only individual Class Members, including: (a) whether Defendants required Class Members to work uncompensated overtime and failed to adequately compensate the Class Members for all hours worked as required by 12 NYCRR § 142-2.2, (b) whether Defendants provided Class Members with the notices required by NYLL § 195(1), (c) whether Defendants provided Class Members with sufficiently detailed wage statements as required by NYLL § 195(3), and (d) whether Defendants took illegal/unauthorized deductions from the Class Members' wages.

31. Absent a class action, many of the Class Members likely will not obtain redress of their injuries and Defendants will retain the proceeds of their violations of the NYLL.

FACTUAL ALLEGATIONS

32. Defendants operate a transportation company that delivers freight for its commercial and individual customers to Ecuador, Colombia, Mexico, Peru, Guatemala, Honduras, Nicaragua and El Salvador.

33. Defendants service customers and have offices in New York, New Jersey, Connecticut, Pennsylvania, Massachusetts, and Minnesota.

34. Defendants' principal place of business is located in Queens County at 43-10 National Street, Corona, New York.

35. At all times relevant hereto, Defendants employed Plaintiff, the FLSA Collective Plaintiffs, and the Class Members as non-exempt employees.

36. Defendants assigned Plaintiff, the FLSA Collective Plaintiffs, and the Class Members to perform the following duties: driving Defendants' delivery vans to pick up and drop off mail, packages and other freight, loading and unloading mail, packages and other freight into and out of the delivery vans, repackaging mail, packages and other freight for overseas shipment, scanning mail, packages and other freight, and other miscellaneous shipping and cargo related activities.

37. Defendants exercised extensive control over the manner in which Plaintiff, the FLSA Collective Plaintiffs, and the Class Members conducted their work.

38. At all times relevant hereto, Defendants' premises and equipment were used for Plaintiff's, the FLSA Collective Plaintiffs', and the Class Members' work.

39. At all times relevant hereto, Plaintiff worked exclusively for Defendants.

40. Throughout his employment, Defendants assigned Plaintiff to drive an E-250 Ford cargo van, with a Gross Vehicle Weight Rating of 8,900 lbs.

41. Defendants regularly scheduled Plaintiff, the FLSA Collective Plaintiffs, and the Class Members to work six days a week. Occasionally – during Defendants' busy season in November and/or December – Plaintiff and others similarly situated worked seven days a week.

42. At all times relevant hereto, Defendants paid Plaintiff a salary of $550 per week, plus a commission in the amount of $0.50 for each customer that Plaintiff serviced.

43. Plaintiff and the other FLSA Collective Plaintiffs and the Class Members regularly worked between seventy (70) and eighty (80) hours per week, or more.

44. Defendants failed to pay Plaintiff, and the other FLSA Collective Plaintiffs and the Class Members, overtime premiums for hours worked beyond forty (40) hours per week.

45. Plaintiff was scheduled, and paid, to work a nine hour shift per day, from 10:00 AM through 7:00 PM.

46. However, because Defendants assigned so much work to Plaintiff, Plaintiff regularly had to work until 9:00 PM, or later, to finish his work. Several times per week Plaintiff worked until 11:00 PM.

47. On Thursdays – when Defendants would have its employees prepare all the mail, packages and other freight received during the week for overseas shipment – Plaintiff, the FLSA Collective Plaintiffs, and the Class Members had to work past midnight until approximately 2:00 AM.

48. Defendants failed to pay Plaintiff for work performed after 7:00 PM.

49. Due to his heavy workload, Plaintiff was unable to take any meal breaks during his workday, except for a brief lunch break on Thursdays when Defendants would often provide lunch for its employees who were assigned to work at company headquarters for as long as 16 hours.

50. Defendants and Defendants' management knew that Plaintiff, the FLSA Collective Plaintiffs, and the Class Members regularly worked past the end of their shifts without being paid for the extra time.

51. Plaintiff, the FLSA Collective Plaintiffs, and the Class Members regularly worked over 40 hours per workweek.

52. Despite Plaintiffs, the FLSA Collective Plaintiffs, and the Class Members regularly working in excess of 40 hours per week, Defendants failed to pay them overtime premiums as required by law.

53. Defendants did not properly compensate Plaintiff, the FLSA Collective Plaintiffs, and the Class Members at the lawful overtime rates of one and one-half times their regular hourly rates of pay as required by law for all hours worked in excess of forty (40) hours per week.

54. Defendants failed to keep accurate and sufficient time records as required by Federal and New York State laws.

55. Defendants failed to provide Plaintiff and the Class Members with the notices required by NYLL §195(1).

56. Defendants violated NYLL § 195(3) by failing to furnish Plaintiff and the Class Members with a statement with every payment of wages, listing, among other

things, hours worked, rates paid, gross wages, deductions and net wages, and an explanation of how such wages were computed.

57. Defendants violated NYLL § 195(4) by failing to establish, maintain and preserve, for not less than six (6) years, sufficiently detailed payroll records showing among other things, the hours worked, gross wages, deductions and net wages for each employee.

58. Defendants' record keeping and notice violations prevented Plaintiff, the FLSA Collective Plaintiffs, and Class Members from knowing their legal rights and from figuring out exactly how many hours they were not compensated for.

59. Defendants knew of, and/or showed reckless disregard for, the practices by which Plaintiff and other similarly situated employees of Defendants were not paid overtime premiums for all hours worked in excess of 40 hours in a week.

60. Defendants knew that the nonpayment of overtime premiums would economically injure Plaintiff, the FLSA Collective Plaintiffs, and the Class Members, and that they violated the FLSA and the NYLL.

61. Defendants committed the foregoing acts knowingly, intentionally and willfully against the Plaintiff, the FLSA Collective Plaintiffs, and the Class Members.

FIRST CLAIM FOR RELIEF

(Failure to Pay Overtime Wages – FLSA, Brought by Plaintiff on Behalf of Himself and the FLSA Collective Plaintiffs)

62. Plaintiff, on behalf of himself and the FLSA Collective Plaintiffs, realleges and incorporates by reference all previous paragraphs as if they were set forth again herein.

63. Throughout the statute of limitations period covered by these claims, Plaintiff and the FLSA Collective Plaintiffs regularly worked in excess of forty (40) hours per workweek.

64. At all relevant times, Defendants willfully, regularly, repeatedly and knowingly failed to pay Plaintiff and the FLSA Collective Plaintiffs the required overtime rates for all hours worked in excess of forty (40) hours per workweek.

65. Plaintiff, on behalf of himself and the FLSA Collective Plaintiffs, seeks damages in the amount of their respective unpaid overtime compensation, liquidated (double) damages as provided by the FLSA for overtime violations, attorneys' fees and costs, and such other legal and equitable relief as this Court deems just and proper.

66. Because Defendants' violations of the FLSA have been willful, and because Defendants failed to post the notices required by the FLSA, the three-year statute of limitations pursuant to 29 U.S.C. § 255 should be equitably tolled for, at the very least, the six-year NYLL statute of limitations period.

SECOND CLAIM FOR RELIEF

(Failure to Pay Wages & Overtime Wages – NYLL, Brought by Plaintiff on Behalf of Himself and the Class Members)

67. Plaintiff, on behalf of himself and the Class Members, realleges and incorporates by reference all previous paragraphs as if they were set forth again herein.

68. It is unlawful under New York law for an employer to suffer or permit a non-exempt employee to work without paying overtime premiums for all hours worked in excess of forty (40) hours in any workweek.

69. Throughout the Class Period, Defendants willfully, regularly, repeatedly and knowingly failed to pay Plaintiff and the Class Members for all hours worked and the required overtime rates for all hours worked in excess of forty (40) hours per workweek.

70. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and the Class Members have sustained damages, including loss of earnings, in an amount to be established at trial.

71. Plaintiff, on behalf of himself and the Class Members, seek damages in the amount of their respective unpaid wages, overtime compensation, liquidated damages, prejudgment interest, attorneys' fees and costs, pursuant to NYLL, and such other legal and equitable relief as this Court deems just and proper.

THIRD CLAIM FOR RELIEF

(Notice Violations & Record Keeping & Wage Statement Violations – NYLL §195, Brought by Plaintiff on Behalf of Himself and the Class Members)

72. Plaintiff, on behalf of himself and the Class Members, realleges and incorporates by reference all previous paragraphs as if they were set forth again herein.

73. Defendants have willfully failed to supply Plaintiff and the Class Members with notice as required by NYLL § 195, in English or in the languages identified by Plaintiff and each Class Member as his/her primary language, containing their rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with NYLL § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of

business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

74. Defendants have willfully failed to supply Plaintiff and each Class Member with an accurate statement of wages as required by NYLL § 195, containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; allowances, if any, claimed as part of the minimum wage; and net wages.

75. Due to Defendants' violations of the NYLL, Plaintiff and the Class Members are entitled to recover from Defendants $100 for each workweek that the violations occurred or continue to occur, or a total of $2,500, as provided for by NYLL § 198(1)-d, and $50 dollars for each workweek that the violations occurred or continue to occur, or a total of $2,500, as provided for by NYLL § 198(1)-b, as well as reasonable attorneys' fees, costs, injunctive and declaratory relief.

FOURTH CLAIM FOR RELIEF

New York Labor Law, Section 193 & 12 NYCCR Part 195 -- Deductions from Pay
(Brought by Plaintiff on Behalf of Himself and the Class Members)

76. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs as if they were set forth herein.

77. In violation of NYLL section 193(2), Defendants willfully made illegal and unauthorized deductions from Plaintiff's and the Class Members' wages for traffic light tickets, speeding tickets, parking tickets, and/or other traffic violations.

78. Due to Defendants' violations of the NYLL and its implementing regulations, Plaintiff and the Class Members are entitled to recover from Defendants all unpaid wages due to them, including all wages illegally deducted/withheld, as well as liquidated damages, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, the FLSA Collective Plaintiffs, and the Class Members, prays for relief as follows:

(a) Designation of this action as a collective action on behalf of the FLSA Collective Plaintiffs and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b);

(b) Certification of this action as a class action;

(c) Designation of the Named Plaintiff as the Representative of the FLSA Collective Plaintiffs and Class Representative of the Class;

(d) An award of damages, according to proof, including FLSA and NYLL liquidated damages, statutory penalties, and interest, to be paid by Defendants;

(e) Costs of action incurred herein, including expert fees;

(f) Attorneys' fees, including fees pursuant to 29 U.S.C. § 216, N.Y. Lab. L. §§ 663, 198 and other applicable statutes;

(g) Pre-Judgment and post-judgment interest, as provided by law; and

(h) Such other and further legal and equitable relief as this Court deems necessary, just and proper.

JURY DEMAND

Plaintiff, on behalf of himself, the FLSA Collective Plaintiffs and the Class Members, demands a trial by jury on all causes of action and claims with respect to which they have a right to a jury trial.

Dated: November 22, 2016

Respectfully submitted,

HARRISON, HARRISON & ASSOCIATES

___/S/ DAVID HARRISON___________

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Attorney for Plaintiff, Proposed Collective Action Plaintiffs and Proposed Class Members

Exhibit A

I am a current or former employee of COSTAMAR EXPRESS CARGO & SHIPPING, INC. and/or related entities/individuals. I hereby consent and agree to be a party Plaintiff in this Action to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. 216(b).

I hereby designate Harrison, Harrison & Associates, Ltd. to represent me in this Action and I also consent and agree, if such is necessary, to file this claim on behalf of all others similarly situated.

Signed this 9 day of November, 2016.

____

Signature

IGNACIO. SOLIS

Full Legal Name (print)